

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 30 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CRISTOBAL RODRIGUEZ-MORENO,

Defendant - Appellant.

No. 07-10419

D.C. No. CR-06-02130-DCB

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted July 22, 2008^{**}

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Cristobal Rodriguez-Moreno appeals from the 70-month sentence imposed following his guilty-plea conviction for illegal re-entry after deportation, in violation of 8 U.S.C § 1326(a). We have jurisdiction under 28 U.S.C § 1291, and

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

we affirm.

Rodriguez-Moreno contends that his sentence is procedurally and substantively unreasonable because the district court treated the sentencing guidelines as mandatory and did not sufficiently reduce his sentence to account for unwarranted sentencing disparities between his sentence and the sentences of similarly-situated defendants, as well as his own prior sentences. We disagree.

The record reflects that the district court treated the guidelines as advisory. *See United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (en banc). In addition, the district court considered the disparities between Rodriguez-Moreno's sentence and the sentences of similarly-situated defendants and varied below the guidelines on this basis. Even if a disparity still existed, the district court properly considered the advisory guidelines and the 18 U.S.C § 3553 factors. *See United States v. Marcial-Santiago*, 447 F.3d 715, 719 (9th Cir. 2006) (holding that a sentence is not unreasonable if the district court has considered the disparity and conducted a thorough sentencing analysis).

AFFIRMED.